

The SPEAKER pro tempore. The Clerk will report the last amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 199: Page 41, strike out lines 9 to 19, inclusive, and insert:

Sec. 305. No bill or resolution providing new budget authority for fiscal year 1982 or providing new spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 in excess of the allocation to or report by a committee or subcommittee pursuant to section 302 of the Budget Act shall be enrolled until Congress has completed action on the Second Budget Resolution for that fiscal year as required to be reported under section 310 of the Budget Act; and, if a reconciliation bill or reconciliation resolution, or both, are required to be reported under section 310(c), until Congress has completed action on that bill or resolution or both.

Mr. JONES of Oklahoma (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

MOTION OFFERED BY MR. JONES OF OKLAHOMA

Mr. JONES of Oklahoma. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. JONES of Oklahoma moves that the House recede from its disagreement to the amendment of the Senate, numbered 199, and agree to the same with amendments as follows: Strike out the matter proposed to be inserted by the Senate amendment, and restore the matter proposed to be stricken out by the Senate amendment.

On page 41, line 9, of the House engrossed concurrent resolution, strike out "Sec. 305. (a)" and insert the following: "Sec. 305."

On page 42 of the House engrossed concurrent resolution, strike out lines 1 through 3.

Mr. JONES of Oklahoma (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

The motion was agreed to.

#### MOTION TO INSTRUCT CONFEREES TO AGREE TO SECTION 303 OF SENATE AMENDMENT TO H.R. 31, THE CASH DISCOUNT ACT

Mr. MADIGAN. Mr. Speaker, I offer a privileged motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. MADIGAN moves that the managers on the part of the House at the committee of conference on the bill H.R. 31 be instructed to agree to section 303 of the Senate amendment which removes the age restriction for appointment to the Surgeon Generalship.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. MADIGAN) is recognized for 1 hour.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to urge my colleagues to support my motion to instruct House conferees on nongermane provisions found in H.R. 31, the Cash Discount Act.

As some of my colleagues may not be aware of the situation on this bill, I will give a brief recap:

H.R. 31, the Cash Discount Act, was reported by the House Banking Committee and passed the House. It was amended on the floor of the other body with the insertion of nongermane language relating to the Public Health Service Act. When returned to this body, the speaker referred the nongermane portion of the amended bill to the Subcommittee on Health and the Environment of the Energy and Commerce Committee. Our distinguished chairman, the gentleman from California, called one day of hearings at which we discussed this and ancillary issues. The subcommittee and full committee took no further action. Some 6 weeks ago, the House appointed conferees on this bill. Three weeks ago, the other house did likewise. Conferees have unsuccessfully attempted to meet on two occasions.

This then is the situation today: A worthwhile piece of legislation has been blocked due to nongermane language. In addition, unrelated concerns have intruded upon the central issue of the amending language found in the bill.

As a result of this deadlock, I rise today to seek my colleagues' approval of a motion to instruct conferees to accept language which would resolve certain problems created by the other body's nongermane language. Before I discuss this specific language, however, I would like to direct this body's attention to what I consider a serious flaw in the Public Health Service Act.

The Public Health Service Act as it relates to the service of the Surgeon General unduly discriminates on the basis of age. I find such discrimination to be unwarranted.

The Surgeon General of the Public Health Service is one of the key posts in the Department of Health and Human Services. The Surgeon General is also the highest ranking officer in the commissioner corps of the Public Health Service, one of the seven uniformed services of the United States.

Under existing statute, an individual who is 64 years of age or older may not receive an original appointment in the commissioned corps because of prohibitions contained in the retirement authority. The law mandates that a commissioned officer be retired on the first day of the month immediately following the month he or she attains the age of 64. I consider this age discrimination of the worst sort and would hope that my colleagues would agree.

I would also like to point out the support of my chairman, the gentleman from California, in our efforts to

address the age discrimination question. I know his particular aversion to such discrimination, no matter where it is found, and would urge my colleagues to associate themselves with our dislike of such practices.

Recognizing the discriminatory effects of the present Public Health Service Act language, the other body sought to ease the situation by appending nongermane language to H.R. 31. Their amendment exempts an individual 64 or over from requirements which preclude appointment as Surgeon General.

These discriminatory statutory requirements unduly restrict the ability of the President to appoint as Surgeon General individuals who have exceptional qualifications in medicine and health care administration merely because those individuals have attained a certain age. For instance, the President wants to appoint a very distinguished and able surgeon and medical professor, an individual who has many years of volunteer public health service in his background. This physician has been surgeon-in-chief of a major children's hospital in the United States, is a world-renowned pediatric surgeon, as well as an innovator of new techniques in surgical procedures relating to childhood cancer. In addition, this distinguished physician inspired the creation of the first neonatal surgical intensive care unit in the United States, a service which has contributed significantly to the reduction of new-born mortality rates. Due to his activities in educating medical professionals, he has raised the standard of surgical care for children and others throughout this Nation and many other parts of the world. A great number of his former students are now well established as professors of pediatric surgery, division chiefs in pediatric surgery, and surgeons in chief of children's hospitals.

This individual has been a professor of pediatric surgery and pediatrics at a major eastern university, a diplomat of the American Board of Surgery, a fellow of the American College of Surgeons and the American Academy of Pediatrics, and is specially certified in pediatric surgery by the American Board of Surgery. His other professional memberships include the Society for University Surgeons, the Philadelphia Academy of Surgery, the American Pediatric Surgical Association, the British Association of Pediatric Surgeons, the International Society of Surgery, the Deutsche Gesellschaft für Kinderchirurgie, the Marseille Surgical Society, and the College of Surgeons of the Dominican Republic. Further, he has received many honors, awards, and honorary degrees, and has engaged in public health activities in more than three dozen countries around the world. And yet, due to the mere fact this individual is over the age of 64, he is statutorily precluded from nomination and confirma-

*Failure to pass age restriction*

tion as Surgeon General of the United States. I find such discrimination based on an individual's age to be repugnant to the fundamental principles of our society. In addition, I would like to provide the President of the United States with greater flexibility in the administration and management of the Public Health Service and the Public Health Service Commission Corps. As a result, I urge my colleagues to support this motion to instruct conferees to accept language which eliminates these unnecessary restrictions. I urge you to do so because it is only proper that we allow individuals who have achieved mature years to serve in responsible positions in this Government.

Mr. BIAGGI. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from New York.

Mr. BIAGGI. I thank the gentleman for yielding.

I rise in support of the gentleman's motion for two very specific reasons: One, I think the President should be given the flexibility necessary in order to flesh out his administration organization.

But even more significant is the question of discrimination. The gentleman has expressed his opposition to that practice and clearly the Congress has spoken out on this issue many times, but more importantly, the Congress has enacted legislation which removed mandatory retirement in most quarters in our country.

We are in the process of deliberating on the areas remaining. The Select Committee on Aging, of which the illustrious gentleman from Florida (Mr. PEPPER) serves as chairman, has been in the forefront in dealing with discrimination.

I, as a member of that committee, and chairman of one of its subcommittees, have attempted to consistently eliminate any form of discrimination in relation to the elderly in every program in our Nation.

To have it applied here because it deals with one individual, I believe, is certainly outrageous.

I would certainly hope that if the motion is carried—and I hope it will be—that we address ourselves to the broader area, to all individuals who might be considered for appointment by the President, that appointment not to be inhibited by virtue of his age.

I congratulate the gentleman for his motion.

Mr. MADIGAN. I thank the gentleman for his support.

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the distinguished chairman of the Republican Conference, the gentleman from New York (Mr. KEMP).

Mr. KEMP. I thank the gentleman for yielding.

I want to thank the gentleman for his leadership on this issue.

I rise, Mr. Speaker, in support of the Madigan motion. I want to congratulate the gentleman from New York (Mr. BIAGGI) for raising an issue that I think needs to be raised, that it is discriminatory to suggest that Dr. Koop should not be allowed to serve as Surgeon General because he has passed, I think by less than 100 days, the so-called mandatory age limit.

There is no doubt in my mind that there is discrimination at work in this. The campaign that has been waged against Dr. Koop is unfortunate. He is one of the most distinguished Americans, one of the most distinguished physicians, one of the most distinguished humanitarians in the country.

Dr. Koop, the President's choice for Surgeon General, has been the chief of pediatric surgery at the Children's Hospital in Philadelphia for the past 35 years. His work there has been dedicated to saving and improving the lives of our most precious resource, our children.

When Dr. Koop arrived at Children's Hospital in 1946, the surgical services there were understaffed and underdeveloped. The surgical roster included only three patients. Under Dr. Koop's leadership, the surgical program has become one of the finest in the Nation. It is a training ground for highly skilled pediatric surgeons from around the world. Today the hospital serves over 5,000 patients per year in need of every type of surgical care.

One of the reasons for the program's success is Dr. Koop's medical philosophy. He has been a leader of the movement to base the practice of pediatric surgery on physiologic principles. Prior to this, children were treated as if they were small adults, and their special needs were ignored.

Dr. Koop has been a pioneer in the development of surgery on the newborn. His successful separation of Siamese twins in 1974 brought him national recognition. He has played a major role in the creation of the first newborn surgical intensive care unit, which in turn has helped to significantly reduce the mortality rates for infants in the United States.

In addition to his work as a surgeon, Dr. Koop has shared his experience and knowledge through his career as a teacher. Since 1942 he has been on the faculty of the University of Pennsylvania School of Medicine. He has lectured as a visiting professor in universities worldwide. He was instrumental in setting up a modern medical school in Ghana, and he has personally trained pediatric surgeons for hospitals from Korea to Krakow.

Dr. Koop has been accorded the highest honors possible by his colleagues in the medical profession. He is a past recipient of both the Ladd Gold Medal of the American Academy of Pediatrics and the Denis Brown Gold Medal of the British Association of Pediatric Surgeons. The Ex-Residents of Pennsylvania Hospital presented him

with their Jacob D. Ehrenzeller Award in 1974.

Citizen groups have recognized Dr. Koop for his achievements as well. He has been named man of the year by both the Jewish Community Chaplaincy Service and the Presbyterian Social Union of Philadelphia. He has also been honored by the Philadelphia Chapter of the Juvenile Diabetes Foundation, the Golden Slipper Club and Wheels, Inc. Internationally, Dr. Koop has been awarded the Order Duarte, Sanchez and Mella, the Dominican Republic's highest honor, and is a member of the French Legion of Honor.

Through the more than 170 articles and books he has written, Dr. Koop has contributed to the rise in the standard of hospital care available throughout the Nation and the world. He sits on the editorial boards of pediatric journals in Japan and Germany, as well as in the United States. He has demonstrated his commitment to human life by producing, along with the eminent theologian Francis Schaeffer, the multimedia presentation "Whatever Happened to the Human Race?"

We cannot deny the American people the benefits of Dr. Koop's extraordinary talent and experience because of an arbitrary age restriction. Therefore I urge my colleagues to vote in favor of Mr. MADIGAN's motion to instruct the conferees to accept the Helms amendment.

I certainly want to commend the gentleman from Illinois not only for his effort to bring these facts to the attention of the Congress, but for the effort that the gentleman has made in making sure that the President does have the right to pick his own Surgeon General.

□ 1245

I think Dr. Koop is going to serve this country with great distinction.

(Mr. KEMP asked and was given permission to revise and extend his remarks.)

Mr. MADIGAN. I want to thank the gentleman from New York for his contribution.

Mr. LUKEN. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Ohio.

Mr. LUKEN. Mr. Speaker, I thank the gentleman. Much as I am reluctant to take even the slightest issue with my chairman, I think the issue here is a very important one.

I would like to ask the gentleman: There are two obstacles that have to be overcome from the appointment of Dr. Koop. The elimination of the age question, and also the elimination of a rather archaic requirement that the Surgeon General be appointed from the U.S. Public Health Service. Is that right?

Mr. MADIGAN. The gentleman is correct.

Mr. LUKEN. Therefore, in conference or at some point, if Dr. Koop is to be appointed, there would have to be a further amendment offered other than the elimination of the age question.

Mr. MADIGAN. Yes, at some point in the legislative process the second problem must be addressed. It is our judgment that it cannot be addressed here because to add that language would go beyond the scope of the Senate amendment and make our motion subject to a point of order.

Mr. LUKEN. I thank the gentleman. I am really not going to testify as to Dr. Koop's qualifications, but I think it is clear that this body would want to eliminate the age disqualification, which is what is incorporated within these particular instructions.

I also, as I stated when the matter came up in the subcommittee, I think it is also pretty clear that the provision that the Surgeon General of the United States must be appointed from the U.S. Public Health Service is obviously an extreme limitation. It has been honored more in the breach than the observance, the recent Carter nominee and appointee having served a very fleeting time in the U.S. Public Health Service, just in transition.

I think that these two obstacles should be eliminated, and then the consideration of Dr. Koop should be considered on its merits, which I do not believe are before this body.

(Mr. LUKEN asked and was given permission to revise and extend his remarks.)

Mr. LUKEN. Mr. Speaker, I rise in support of Mr. Madigan's motion. As a member of the Health and Environment Subcommittee to which the surgeon general amendment was referred, and as a member of the majority party, I do not believe that this should be a partisan issue. Rather it is an issue of age discrimination.

If the President of the United States wishes to appoint Dr. C. Everett Koop, a distinguished physician, to a position of responsibility, he should have his choice, if Dr. Koop is qualified. We should welcome all questions in regard to Dr. Koop, and the proper forum for investigating his qualifications is the U.S. Senate. If evidence shows that the doctor is not qualified to be surgeon general, fine, but let us not disqualify the man on the basis of an arbitrary age limitation.

It is not within our powers as Members of the House of Representatives to judge the qualifications of Dr. Koop, but if it is within our power to remove any barrier based on race, creed, sex, or age, we must act.

Here we are dealing with an archaic provision in the Public Health Service Act which allows the kind of discrimination that the distinguished chairman of the Select Committee on Aging has fought so long and so successfully to eradicate. Age barriers have fallen in the civil service, private employment, and other sectors of American

society. We can now progress a step further toward ending age discrimination by eliminating this restriction on the position of Surgeon General.

The President of the United States is 70 years old. Is not a provision which prevents him from appointing a man 6 years his junior a bit absurd? And there is no age limit for service in this body. Some of our most distinguished Members are over the age limit set for Surgeon General. We should not want to be deprived of their experience and wisdom gained over the years because of a limitation based on age.

Let us put this in perspective, leaving aside the other issues involved—Dr. Koop's controversial views and the maneuvering which has brought us to this point today. I urge that we instruct the House conferees to accept the Senate amendment, change this discriminatory feature in the law, and let the merits of the nomination be considered in the body authorized by the Constitution to advise and consent to Presidential appointees.

Mrs. SCHROEDER. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I would yield to the gentlewoman from Colorado for the purpose of debate.

Mrs. SCHROEDER. Mr. Speaker, I just basically wanted to ask the gentleman from Illinois a question about his motion. It is my understanding that everyone in public service, or in the public health area, is subject to the same retirement laws; is that correct?

Mr. MADIGAN. That is my understanding, yes.

Mrs. SCHROEDER. And the gentleman is only asking for one person to be exempt from that?

Mr. MADIGAN. As a matter of fact, I have indicated, and I would say to the gentlewoman, that I believe the restriction should be removed entirely. But, if I were to offer a motion to instruct the conferees to do that, such a motion would be subject to a point of order on the floor since the Senate amendment contained only the provision relating to one individual. But, it is my position that it should be removed entirely, and I would be willing to cosponsor with the gentlewoman a bill to that effect.

Mrs. SCHROEDER. What the gentleman is saying is that basically all he can do is for this one person at this time. Has he introduced a bill?

Mr. MADIGAN. No, but I have indicated to the chairman of the subcommittee that I am supportive of a bill that would do what the gentlewoman apparently wishes to have done.

Mrs. SCHROEDER. I suppose my biggest problem with this is, I chair the Civil Service Subcommittee, and I would find it a very, very bad precedent in this House if we start a single shot of people and exempt them from the laws. I think a much better way to go would be with a bill letting the entire Public Health Service out. I find that when we get into nonger-

mane amendments and Christmas trees and hanging things on a cash bill, I really think that could destroy morale in the agency when we do not have a bill including everyone else. I think that is the right way to go, and I certainly hope the gentleman will introduce his bill and do that rather than this single-shot thing.

Mr. MADIGAN. As I have indicated, I am supportive of such an effort. I think the House on previous occasions has adopted legislation that would indicate that all of us do not support this arbitrary age discrimination, but we have a situation where the President of the United States, clearly elected by a majority of the people in the country, has not been able to appoint the gentleman of his choosing as Surgeon General of the United States. I think that to delay that any further while we consider from its very inception a broader piece of legislation is to impact upon the morale of the whole country. I think that people in the country clearly want this administration to be able to appoint its people and to be able to get the Government functioning. The quickest way to do that is to agree with the Senate amendment and then consider the bill the gentlewoman would have us consider.

Mrs. SCHROEDER. I guess I would dispute that. I feel that one of the great strengths of a democracy is citizens feeling that they are going to have equal treatment. I think we should continue down that path of treating people equally rather than just doing special things and nongermane amendments to bills for one person.

Mr. MADIGAN. I would say to the gentlewoman that there is only one Surgeon General and only one candidate.

Mrs. SCHROEDER. If the gentleman would yield further, I would remind him that the discrimination we are talking about applies to an entire class of people, everyone working at the Public Health Service. I think age discrimination is just as shocking against people at lower levels as it is against the one person at the very top.

Mr. MADIGAN. I thank the gentlewoman for her contribution.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I would be happy to yield 10 minutes to the gentleman from California for the purpose of debate.

Mr. WAXMAN. I thank the gentleman for yielding.

Mr. Speaker, as one of the original coauthors of the bill to end mandatory retirement, I am delighted to hear the expressions of support, to end that discrimination in other areas in a much broader way than the Congress was able to do when we ended age discrimination in the civilian sector of public employment.

What we have in the law today is a mandatory retirement age for the seven uniformed services. The Surgeon General is the Surgeon General of the Public Health Service Commissioned Corps, which is part of the military. He is, therefore, subject to mandatory retirement.

I think we ought to eliminate that mandatory retirement in a very broad way. Our remedial action ought not to be for one individual alone. It ought to be for the Deputy Surgeon General, for the Assistant Surgeon General, and for the other people serving in the uniformed services.

But, I guess the point really at issue today, and the reason I would urge my colleagues to defeat this motion to instruct conferees, is that the legislative process should handle the decision-making in these kinds of questions in a rational way. My colleague from Illinois expresses his desire to join with us in eliminating mandatory retirement. We can do that. Others have expressed the desire to eliminate that archaic provision which requires the Surgeon General to be a member of the Public Health Service Corps. We may want to do that. We have heard from some citizens who would like to have us write into the law the qualification for a Surgeon General the assumption that we had always made—that the chief public health officer of this country must have public health experience and background. We may well want to do that.

The appropriate legislative committee ought to make a decision as to the qualifications of the Surgeon General. But the appropriate committee of the House and the appropriate committee of the Senate did not have that opportunity. What we had was a bill dealing with credit cards that came out of the House Banking Committee, and which passed this House overwhelmingly. That bill was amended by a nongermane amendment to provide that the Surgeon General—and that person alone—not be faced with mandatory retirement.

Now, we have before us this question of whether we ought to agree in a conference on the policy to regulate the appointment and retirement of the Surgeon General. I think what we ought to do is to have this bill go directly to the appropriate committee, not to legislate by nongermane amendments which are not thought out and which are tacked onto House bills that have nothing to do with the subject of the amendments.

Our subcommittee has had hearings on the subject. We are ready to move after a short additional hearing. We would like to hear from some other witnesses that have important, relevant things to say, and then we will produce a bill for the House. We will produce a bill for the House that does what everybody says they want done.

Now, this amendment that the conferees would be instructed to agree to is a failed amendment. I doubt wheth-

er the President would really want us to agree to that amendment. What that amendment does is say that the only person that is exempt from mandatory retirement would be the Surgeon General. It does not say that someone over the age of 64 may be appointed to the Public Health Service Corps. It does not remove mandatory retirement from the PHS law. I think we ought to be broader than that. We ought to deal with the principle involved with mandatory retirement in a more comprehensive way. But we have not done that here. And if we want to deal with the qualifications of the Surgeon General, we ought to have hearings and legislation dealing with that subject. What is at stake now is a circumvention of the legislative process as we know it and as it has best suited this country for the entire history of the time the Congress has considered legislation.

This amendment has significant implications for the jurisdiction of House committees and for the rules of the House, as well as the public health and the Commissioned Corps of the Public Health Service. The committee jurisdictions were ignored; they were circumvented. We did not have an opportunity to consider the legislation in our committee, which is the appropriate committee; nor did the committee in the other body have such an opportunity.

Now, instead, we are in conference. We may well agree in conference to something along the lines that the gentleman from Illinois would like to have us agree to, but we have not yet had a chance to meet in conference. The House conferees were there at the call of the meeting, ready for the conference to take place, but the Senate conferees, who are to defend this nongermane amendment to the banking bill, did not attend. We have now scheduled another attempt at a conference meeting later this week.

I urge that we let the conferees meet and discuss the issue. I will urge the conferees not to agree to a provision that does not do the job. I would want us, if we are going to agree to something in conference, to agree to something that rationally deals with the qualifications and requirements of the Surgeon General. I would like to see us end mandatory retirement. I would like to see us require public health credentials of a candidate for Surgeon General. But do the Members know what we would have as a problem at that point? Because we are legislating on a nongermane amendment to a House bill, we would have a scope of conference problem. I suppose the appropriate way to handle this is to have a committee in the House and a committee in the Senate act forthwith, immediately, to consider the legislation; we should have our hearings and report bills.

We are not trying to hold up the legislation. We are willing to act. We should not be instructed as conferees

to agree to something that is flawed, and flawed because the legislative process was not followed. Legislation was drafted on the Senate floor without consideration by the committee that could have drafted a much more reasonable and workable proposal.

Mr. Speaker, I would like to yield to the gentlewoman from Maryland (Ms. MIKULSKI), a very distinguished member of our subcommittee, who has been involved in the hearings we held on the question of the Surgeon General's qualifications.

Ms. MIKULSKI. Mr. Speaker, I thank the gentleman. I would like to rise in support of and to amplify the comments of the gentleman from California.

First of all, I would like to support the principle he is advocating, that we are circumventing the committee process by advocating a nongermane issue in the conference report. But, the other point I wanted to bring out is the fact that one of the principles under discussion is the whole issue of public health experience.

One of the factors to be considered is the issue of public health experience. There is no question that the nominee from Pennsylvania has distinguished and outstanding clinical experience, but the American Public Health Association came before our committee to testify against this process in selecting him—an unprecedented action in their over 50 years of history, to question the issue of appointing a Surgeon General who had no public health experience, not negating his clinical experience. They were advocating that we have a nominee who either is from the Public Health Service Corps, that we so not waive that; or that we establish criteria for public health background.

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Public health is a separate area and specialty of medical practice. There are even residencies in public health practice. To equate the fact that we need an expert clinician to be the Public Health Surgeon General is to say that in order to be a member of the Joint Chiefs of Staff, military experience and management experience do not count, but what counts is being a sharpshooter.

There is no doubt that what we need is someone who understands the public health issues of this country. Most people die because of those things related to public health issues, and I think to proceed in this way makes faulty public policy.

Mr. WAXMAN. Mr. Speaker, I thank the gentlewoman from Maryland (Ms. MIKULSKI).

Mr. Speaker, I say to my colleagues that the Senate had before it a bill dealing with credit cards, and at that time the sponsor of the amendment that we are asked to have our conferees support said that the language was not controversial or technical, and

that the House had agreed to it. That was not true. The House had not agreed to the language, it was not non-technical, it was not noncontroversial. It was not heard by the appropriate Senate committee, and it had not been heard by the appropriate House committee. It does not deal with what the sponsors of the amendment would like to deal with and does not allow the appointment of a Surgeon General over the age of 64 from outside the Corps.

Mr. Speaker, I say to the Members, do not force us or instruct us to go along with such a flawed amendment.

The SPEAKER pro tempore. The time of the gentleman from California (Mr. WAXMAN) has expired.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. SWIFT. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Washington.

Mr. SWIFT. Mr. Speaker, I would like to ask the gentleman a question, if I might.

Is it the gentleman's understanding that section 303 of the Cash Discount Act would allow the appointment as a Surgeon General of someone over the age of 64 and someone who is not a member of the Public Health Corps? In other words, does he have to be a member of the Public Health Corps?

Mr. MADIGAN. Mr. Speaker, in responding to the gentleman from Washington (Mr. Swift), I would say that the present candidate has two disabilities: His nonmembership in the Public Health Service Corps and the fact that he is beyond the specified age for retirement.

The language of the Senate amendment to the Cash Discount Act dealt only with the age question. I am dealing only with the age question here, because to do otherwise would make my motion subject to a point of order.

Mr. SWIFT. Mr. Speaker, will the gentleman yield further?

Mr. MADIGAN. I am happy to yield to the gentleman from Washington.

Mr. SWIFT. Because there was a nongermane amendment in the Senate, because it is flawed in at least two respects, because subsequent action will still have to be taken by Congress before the specific appointee can be appointed to this specific office, before Dr. Koop can be appointed, it would seem to me it would be better to start with a piece of legislation that addresses the whole issue.

We are going to have to take up another piece of legislation anyway. Why could this not be done in a much more orderly approach in one bill that would deal with the question rather than getting into this problem of having to accept nongermane amendments on the part of the Senate that will not even do the job anyway?

Mr. MADIGAN. Mr. Speaker, if the gentleman will allow me to respond, we would do half of the job in this manner, and we would have to find another way to do the other half. I sus-

pect that the opportunity to do that might present itself.

This is the end of May. We are near the end of the fifth month of the year. We do not have the Surgeon General yet appointed. There is no indication of any willingness on the part of anybody in charge of the scheduling of legislation before the subcommittees and the committees of the House to move expeditiously on a bill of this kind. As a matter of fact, the procedure that has been followed here is one that was recommended to the people who were interested in this issue by the highest authorities in the Congress, and we have accepted their recommendations and have proceeded to move in the manner in which they suggested we move.

Mr. SWIFT. Mr. Speaker, if the gentleman will yield further, the President's party is in control of the other body. It is certainly not the fault of anyone in the House that a member of that party, No. 1, stuck a nongermane amendment on this bill, No. 2, did not cover the right things, and, No. 3, made it so it was dysfunctional.

Why should the House have to assume the responsibility for sloppy legislative work that was done in the other body?

Mr. MADIGAN. Mr. Speaker, I would say to the gentleman what I have said before. The procedure that has been followed here is one that was recommended to us, and we have followed that recommendation and will continue to follow it. We acknowledge that there is a second disability, and we will have to find some way to address that. But we think that, this being nearly the end of May, it is time to address this question and to allow a Surgeon General of the United States to be appointed.

There is pending an appointment of an outstanding candidate, perhaps the most outstanding surgeon in the United States. It is absolutely ridiculous to hold up the appointment of such an outstanding individual while we talk about the niceties of parliamentary procedure.

Mr. DOUGHERTY. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Pennsylvania.

(Mr. DOUGHERTY asked and was given permission to revise and extend his remarks, and to include extraneous matter.)

Mr. DOUGHERTY. Mr. Speaker, I rise in strong support of the position of the gentleman from Illinois (Mr. MADIGAN).

Mr. Speaker, I would like to share with my colleagues an op-ed piece written by the chairman of the board of the Children's Hospital in Philadelphia in response to the attack made on Dr. C. Everett Koop in a Washington Post editorial. The author just recently received a form letter from the Post indicating that they were not interested in publishing his response.

# THE QUALIFICATIONS OF DR. C. EVERETT KOOP

(By Richard D. Wood)<sup>1</sup>

I have become increasingly concerned, and even appalled by the ill-informed attacks on Dr. C. Everett Koop in connection with the President's request to the Congress that he be designated Surgeon General. This opposition seems to stem from two sources: First, the pro-abortion forces in this country and, second, some members of the public health establishment.

With regard to the first, let me say that as a Board member of the Children's Hospital of Philadelphia I have been associated with Dr. Koop for the past thirty years; and despite my membership in, and support of, Planned Parenthood, Dr. Koop has never pressed his point of view on me or any other of his associates.

With regard to the second, it would be a breath of fresh air to have someone in this position whose experience and achievements in the field of public health and world health have been as far reaching as his.

Dr. Koop's knowledge of these matters is, indeed, world-wide and far surpasses that of most of those who have criticized him.

What follows is representative, but no more than a sampling of his experience and contributions. My purpose in bringing it to your attention, and thereby to the attention of your readers, is to begin to spell out and illuminate his record of accomplishments, most of which has been largely ignored in the public press. In so doing, I am not politically motivated, but simply hope to provide a more accurate and better balanced context for judgment.

From 1960 to 1980, Dr. Koop was vice president for four terms and a board member of MAP International a relief agency in Wheaton, Illinois. MAP International started out providing medicines and material for doctors working in Third World countries. Its work now extends to efforts in sanitation, water supply, sewage disposal and famine control.

Dr. Koop has chaired the MAP Reader's Digest International Fellowship Committee for many years and has been instrumental in sending some 750 medical student abroad to visit bus-type hospitals in Third World countries for a minimum of 10 weeks. Some of these students have gone on to special training including additional time in schools of public health. They are now returning to Third World countries for careers in international medicine.

In 1960, Dr. Koop made trips to Egypt, Ethiopia, Kenya, Uganda, Tanzania, Belgian Congo (Zaire), South Africa, Nigeria and Ghana to acquaint medical missionaries of American and other origins with the services of MAP International. He flew from bush hospital to bush hospital in a small plane to assess the people's needs.

In 1964, at the request of the Ministry of Health of the Dominican Republic, Dr. Koop set up nine hydration stations for treatment during an epidemic of dysentery where the mortality was in excess of 70 percent.

In 1965, Dr. Koop visited European and Asian fellows who had been previously trained by him at The Children's Hospital of Philadelphia. He lectured in medical schools and operated on patients at teaching hospitals in Greece, Iran, Thailand, the Philippines, Taiwan, Japan and Hong Kong.

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Dr. Koop has displayed a continuing interest in the Tarascan Indians of Southwest Mexico, whose want for medical care stimulated him to work among these people himself, to encourage other physicians to do the same, and eventually to set up a number of dispensaries, staffs of which have been trained by American physician volunteers.

His medical work on behalf of pediatric populations everywhere has been acknowledged by many countries including France, which presented him with the Legion of Honor last June and the city of Marseilles, which last week sent its highest decoration to him. The late President Eisenhower was the last American to be so honored by that city.

Dr. Koop's work has been the essence of public health.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, I feel that I must respond to the assertion made that the appropriate committee has not been willing to consider the legislation.

We asked the administration whether they would like us to proceed with this bill separately, and they have not responded that they are in favor of that.

I might also point out that in the other body the Republican Party is in control, and the committee of jurisdiction in the other body has not held hearings or moved legislation to remedy the provision in the law that prevent the President from making the appointment he wishes to make. We asked the administration to cooperate with us and to have this individual appear before our committee. They refused. Rather than cooperate with us, they have attached a nongermane amendment to a bill that has nothing to do with the issue of the Surgeon General.

I do not know what they have to hide from us, why they do not want us to consider the issue in committee and in an appropriate way, and why they want us to take this halfway measure that will not do the job and why they now ask that conferees agree to something that is inappropriate. I think that is a bad way to legislate.

We are willing to work on this thing and solve problems and let the President make an appointment. The Senate will have confirmation authority; we do not have that authority. I do not expect the President to appoint someone of whom I would wholeheartedly approve. It is his right to make the appointment, not mine. However, it is up to the Senate then to confirm.

This particular nominee is not one about whom I am very enthusiastic, but it is not my job to be enthusiastic or not enthusiastic about him. My job as chairman of the subcommittee is to try to work on legislation that would, in an appropriate way, address the qualifications of the Surgeon General and those of the Public Health Service Corps. I do not think there ought to be a mandatory retirement for the

Surgeon General and others in the Public Health Corps.

Mr. COURTER. Mr. Speaker, will the gentleman yield to me?

Mr. MADIGAN. Mr. Speaker, I would say to the distinguished gentleman from California (Mr. WAXMAN) that I intend to respond to the points he has made, but in the interim period I will yield to the gentleman from New Jersey (Mr. COURTER).

Mr. COURTER. Mr. Speaker, I thank the gentleman for yielding.

I rise in support of the motion offered by the gentleman from Illinois (Mr. MADIGAN). I think, very frankly, that the issue is a very, very important one. Granted that we are attempting to do one-half of the work now, but I have never seen this body refuse to do something or take a step forward because the entire package could not be accomplished on one particular day.

The simple issue here is whether we are going to waive the age requirement for one individual who the President of the United States would like to see appointed to an extremely important position. Time is awasting here. This is not the first time this body has waived age requirements. We have done it for Admiral Rickover, and I understand we have done it a number of times for J. Edgar Hoover.

The simple question here is, will we go along with the President's request on waiving an age requirement with respect to an outstanding medical practitioner in the United States today? I see no complication. I think we should take at least this one step forward this afternoon.

Mr. DERWINSKI. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Speaker, I thank the gentleman for yielding. First, let me offer my support for Dr. Koop for the position of Surgeon General. However, I am somewhat confused by the pattern of debate. I was intrigued by the emphasis on the part of the gentleman from California (Mr. WAXMAN) emphasizing, of course, his committee jurisdiction.

But earlier the gentlewoman from Colorado (Mrs. SCHROEDER) emphasized the same claim of jurisdiction for her committee. If I had a suspicious mind, I would have to ask if this emphasis on committee jurisdiction was not in fact a delaying tactic. But not having that kind of a suspicion, I merely raise the point, and I wonder if the gentleman would care to comment.

Mr. MADIGAN. No.

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the motion offered by the gentleman from Illinois (Mr. MADIGAN). I think it is fairly clear that age discrimination has no part in our statutes, and I

think it ought to be stricken, as we have done over the years.

I think, second, that if this gentleman, the prospective nominee for this post, had not been very outspoken in his opposition to abortion, probably we would not be here today.

So, Mr. Speaker, I thank the gentleman for having brought the issue up, and I urge my colleagues to agree to his motion.

Mrs. SCHROEDER. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield, for the purpose of debate only, to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Speaker, I just want to say that certainly I understand that Civil Service does not have jurisdiction over Public Health, and that it is in someone else's jurisdiction. I was just trying to say that from my perspective it appears very, very important that we keep in mind the fact that some people in the agency are still going to be suffering from age discrimination, and that is terribly important.

The only person this amendment would exempt is the "guy at the top," and all I can say from my perspective is that certainly this damages morale in other agencies.

I do not claim any jurisdiction over that. I am only saying that that is something this body should be very much aware of. I think we should be dealing with age discrimination and how it affects everyone, rather than with special legislation for one person at the top.

Mr. MADIGAN. Mr. Speaker, prior to moving the previous question, I would like to respond briefly to some of the points that have been made.

The gentleman from New Jersey has made the point that we do make exceptions, that we do have a history of making exceptions to the age limitation, and he has cited several instances where that has been done.

But if Members are really concerned about moving ahead with some sort of a proposition to exempt everybody from this age limitation, then let me invite those Members who would want to do that to get up and make a second motion to instruct conferees. I would not raise a point of order against that, and I would be happy to support it.

With respect to legislative committees having the ability to work their will, I would say to everybody assembled in the House that a bill to do what everybody is talking about ought to be done was introduced by the gentleman from Illinois (Mr. HYDE) on April 7, and it has not yet been the subject even of a hearing in any legislative committee.

With regard to the remarks of the gentlewoman from Maryland (Ms. MIKULSKI) that the American Public Health Service has somebody that they would prefer for this appointment, let me simply point out to her that the American Public Health Serv-

ice does not appoint the Surgeon General of the United States. The Surgeon General of the United States is appointed by the President of the United States, and we are trying to facilitate a process that will give him the ability to do that.

Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion to instruct the conferees on H.R. 31 offered by the gentleman from Illinois (Mr. MADIGAN).

The motion to instruct was agreed to.

A motion to reconsider was laid on the table.

**ADJOURNMENT OF THE HOUSE FROM THURSDAY, MAY 21, 1981, TO WEDNESDAY, MAY 27, 1981, AND ADJOURNMENT OF THE SENATE FROM THURSDAY, MAY 21, 1981, TO MONDAY, JUNE 1, 1981**

Mr. MURTHA. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 138) and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 138

*Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on Thursday, May 21, 1981, it stand adjourned until 12 o'clock meridian on Wednesday, May 27, 1981, and that when the Senate adjourns on Thursday, May 21, 1981, it stand adjourned until 12 o'clock meridian on Monday, June 1, 1981.*

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

#### HIGHER EDUCATION ACT AMENDMENTS INTRODUCED

(Mr. COLEMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. COLEMAN. Mr. Speaker, at the request of the administration, I am introducing a bill amending the Higher Education Act of 1965. This bill contains the administration's proposals to restrain growth in the guaranteed student loan (GSL) program and in the Pell grant program in order to achieve the savings the President has asked for and that we will be expected to make in reconciliation.

The administration's bill would make several significant changes in the student assistance programs that are designed to better target loans to the truly needy student and to reaffirm the traditional role of the family. The bill achieves this by limiting guaranteed student loans to the student's "remaining need" after all other assistance and family contributions have been taken into consideration, by asking the parents to contribute more

under a revised formula for determining expected family contribution—for the Pell grant program—and by raising the interest rate paid by parents for parent loans.

This bill also would require a contribution of \$750 in self-help from the student, before any assistance is offered, and the bill would also eliminate the interest subsidy currently paid by the Federal Government on the student's loan while he or she is attending school.

I believe that the proposals contained in the administration's bill deserve thorough consideration by the Congress. I consider these proposals, however, to be but one among many possibilities to achieve the required savings in the GSL and Pell grant programs.

As the ranking Republican on the Subcommittee on Postsecondary Education and from conversations in my office and at home in Missouri, I have heard from students, educators, institutions, large, small, private and public, and from the lending institutions regarding the administration's proposals. I think everyone will agree that we must take action to curtail the burgeoning growth of these programs. While I fully support the administration in this goal, at the same time we must closely scrutinize each proposal, including this one, for its effect upon these very complicated and far-reaching programs.

I have been examining and will continue to examine all suggestions, options, and proposals very carefully, and am certain that changes can be made to the GSL and Pell grant programs that will achieve the savings required by the reconciliation process and at the same time will insure that students have access to grant and loan money.

Mr. Speaker, I place in the Record at this point the text and analysis of the administration's bill:

H.R. 3641

A bill to make certain amendments to the Higher Education Act of 1965

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Higher Education Amendments of 1981"*

SEC. 2. (a) Section 425(a)(1) of the Higher Education Act of 1965 (hereafter referred to as "the Act") is amended by inserting at the beginning thereof the following new sentences:

The amount of any loan made after June 30, 1981 which may be covered by Federal loan insurance under this part shall be limited to the student's financial need for the period of instruction to be covered by the loan. For purposes of this section, the term "financial need" means the estimated cost of attendance less estimated financial assistance and the expected family contribution. The eligible institution at which the student has been accepted for enrollment or at which he is in attendance shall determine the student's financial need in accordance with the provisions of section 482 of this title.

(b) Section 428(b)(1)(A) of the Act is amended by inserting before the words "au-

thorizes the insurance" the following: "limits the amount of any loan made after June 30, 1981 to the student's financial need, as defined in section 425(a)(1), for the period of instruction to be covered by the loan by requiring the eligible institution at which the student has been accepted for enrollment or at which he is in attendance to determine the student's financial need in accordance with the provisions of section 482 of this title."

(c) Section 439B of the Act is repealed.

(d) Section 482(a)(1) of the Act is amended by striking out "and under part B".

(e) Section 428B(b)(3) of the Act is amended by striking out "No" and inserting instead the following:

"Any loan under this section may be counted as part of the student's expected family contribution in the determination of need under this title, but no".

SEC. 3. Section 428 of the Act is amended—

(a) in subsection (a)(1)(A) by inserting before the semicolon the following: "prior to July 1, 1981", and

(b) by amending paragraph (5) of subsection (a) to read as follows:

"(5) The period referred to in subparagraphs (B) and (C) of paragraph (1) of this subsection shall begin on the date of enactment of this Act and end at the close of June 30, 1981.", and

(c) by repealing subsection (e).

SEC. 4. Section 428B of the Act is further amended—

(a) in subsection (c)(1) by inserting before the end thereof a comma and the following: "and shall be made over a period of not more than twenty years",

(b) by amending paragraph (3) of subsection (c) to read as follows:

"(3) The rate of interest on a loan made after June 30, 1981 pursuant to this section shall be set by the lender at a rate not to exceed a rate provided by the Secretary of the Treasury after taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity plus an allowance determined by the Secretary of Education.", and

(c) in subsection (c) by inserting at the end thereof the following new paragraph:

"(4) No special allowances shall be paid to lenders pursuant to section 438 of this part on any loans made under this section after June 30, 1981."

SEC. 5. Section 428(c) of the Act is amended—

(a) in paragraph (2)(D) by striking out after the word "thereof" the comma and the words: "but shall not otherwise provide for subrogation of the United States to rights of any insurance beneficiary", and

(b) by adding at the end thereof the following new paragraph:

"(8) Where the Secretary has made a determination that the protection of the Federal fiscal interest so requires, a guaranty agency shall assign to the Secretary any loan for which the Secretary has made payment under a guaranty agreement pursuant to paragraph (1) of this subsection."

SEC. 6. (a) Section 411(a)(2)(B)(ii) of the Act is amended to read as follows:

"(ii) No basic grant under this subpart shall exceed the difference between the cost of attendance at the institution at which the student is in attendance and the sum of the expected family contribution for the student and an amount of expected self-help as determined by the Secretary. If with respect to any student, it is determined that the amount of the basic grant plus the expected family contribution and the amount of expected self-help for that student exceeds the cost of attendance for that year,